

(This document was filed on February 5, 2002.)

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

GRAND CANYON PRIVATE BOATERS)	
ASSOCIATION, an Arizona Non-Profit)	
Corporation; AMERICAN WHITEWATER, a)	
Missouri Non-Profit Corporation; NATIONAL)	CV-00-1277-PCT-PGR-TSZ
PARKS AND CONSERVATION ASSOCIATION,)	
a District of Columbia Non-Profit Corporation;)	
AMERICAN CANOE ASSOCIATION, a New)	
York Non-Profit Corporation; ELIZABETH)	
BOUSSARD; KIM CRUMBO; JOHN)	
BACHRACH; and MARTY WILSON;)	
)	
Plaintiffs,)	
)	
v.)	
)	
JOSEPH ALSTON, in his official)	
capacity as Superintendent, Grand Canyon)	
National Park; FRAN P. MAINELLA, in her)	
official capacity as Director, National Park Service;)	
GALE NORTON, in her official capacity as)	
Secretary of the Interior; and the NATIONAL)	
PARK SERVICE, an agency of the United States;)	
)	
Defendants,)	
)	
GRAND CANYON RIVER OUTFITTERS)	
ASSOCIATION,)	
)	
Intervening Defendant.)	
)	

SETTLEMENT AGREEMENT

_____ It is hereby stipulated and agreed, by and between the parties herein, that the lawsuit styled Grand Canyon Private Boaters Ass'n v. Alston, Case No. CV-00-1277-PCT-PGR-TSZ, presently pending in the United States District Court for the District of Arizona, shall be settled

in accordance with the terms of this Settlement Agreement (hereinafter “Agreement”):

_____ WHEREAS, plaintiffs Grand Canyon Private Boaters Association, American Whitewater, National Parks and Conservation Association, American Canoe Association, Elizabeth Boussard, Kim Crumbo, John Bachrach, and Marty Wilson (hereinafter “Plaintiffs”) have filed the action Grand Canyon Private Boaters Ass’n v. Alston, Case No. CV-00-1277-PCT-PGR-TSZ (D. Ariz.), in which the Plaintiffs claim that the defendants National Park Service, U.S. Department of the Interior, Secretary of Interior Gale Norton, National Park Service Director Fran P. Mainella, and Grand Canyon National Park Superintendent Joseph Alston (hereinafter “Federal Defendants” or “Service”) have violated the Wilderness Act, the Grand Canyon Enlargement Act, the National Park Service Organic Act, the National Environmental Policy Act, the National Park Service Concessions Policy Act, and other laws related to management of activities on the Colorado River and in the backcountry in Grand Canyon National Park (hereinafter “Park”); and

WHEREAS, the Plaintiffs, Federal Defendants, and Intervening Defendant Grand Canyon River Outfitters Association (hereinafter collectively “Parties”) agree that it is appropriate and in the public interest to resolve amicably and without further litigation, on the terms set forth below, the Plaintiffs’ claims in the above referenced case;

NOW, THEREFORE, without admitting or conceding wrongdoing or liability, the Parties mutually agree as follows:

1. Colorado River Management Plan.

A. Within 120 days after entry of an order dismissing the above-referenced action, the Service will initiate planning efforts to update the Park’s Colorado River Management Plan (hereinafter “CRMP”) of 1989. In connection with this planning process, the Service will prepare appropriate environmental documentation consistent with the National Environmental Policy Act of 1969. The Service will host one public scoping meeting and one public meeting to receive comments on the draft revised river management plan in, at a minimum, each of the

following four cities: Flagstaff, Phoenix, Salt Lake City, and Denver.

B. The Parties acknowledge that during the CRMP planning process, the Service will consult as appropriate with other individuals and entities, including but not limited to federally recognized Indian tribes.

C. Consistent with the National Environmental Policy Act, during the CRMP planning process, the Service will consider, among other things:

i. the appropriate level of visitor use on the Colorado River consistent with resource protection and visitor experience goals;

ii. the allocation of use of the Colorado River between commercial and non-commercial users, the allocation of use between different types of commercial users (e.g., between motorized and non-motorized trips), and alternatives to the current system of commercial/non-commercial allocation;

iii. in consultation with the Hualapai Indian Tribe of Arizona and other appropriate parties, the continued use of helicopters and alternatives to the use of helicopters to transport river passengers in the vicinity of Whitmore Wash;

iv. the impacts of motorized water craft, potential mitigation of those impacts (including technological improvements to motors), and a reasonable range of alternatives with respect to the current ratio of motorized craft to non-motorized craft, which alternatives may include a no-motors alternative as well as one or more alternatives that contemplate the continued use of motors; and

v. the range of services to be provided to the public.

D. In connection with the CRMP planning process, the Service will issue a final NEPA compliance document by December 31, 2004.

E. The Plaintiffs acknowledge that the Service may extend the current river outfitters' concession contracts for up to a total of three years from the current expiration date of those contracts, which is December 31, 2002. The Plaintiffs and the Intervening Defendant will

not challenge, obstruct, delay, or otherwise seek to prevent such extension(s).

F. The Service will seek sufficient funds to accomplish the CRMP planning process.

G. The Plaintiffs and Intervening Defendant will cooperate with the Service in the CRMP planning process by, among other things, making information requested by the Service available on a timely basis. This information may include, without limitation, demographic information regarding river use, demand for river trips, and needs of river users. In accordance with their existing privacy policies, Plaintiffs and Intervening Defendant may protect the privacy of individual members or customers. In updating the CRMP, the Service will not rely on any information provided by Plaintiffs, Intervening Defendant, or any other party that is not deemed public information by all of the Parties.

H. Within five (5) business days after the end of the 2001 primary season (or ten days after this Agreement takes effect, whichever is later), the Intervening Defendant will notify the Service of the number of unused user-days from the commercial, primary-season user-day allocation, if any, for the 2001 primary season. The Service agrees to make such unused user-days available for use for noncommercial access during the 2001-2002 secondary season, utilizing launch dates to be determined solely by the Service. Consistent with the Service's discretion to achieve resource management objectives and the availability of sufficient unused user-days from the commercial primary-season allocation, the Service and Intervening Defendant will repeat the process identified in the first two sentences of this paragraph, on a year-by-year basis, through the 2004 primary season and subsequent 2004-2005 secondary season. The Parties acknowledge that the small number of commercial user-days that currently go unused result from practical and logistical impediments to booking to one hundred percent of any fixed allocation of use and therefore provide no indication as to the public's interest in or demand for commercial river trips in Grand Canyon National Park.

2. The Service will make available to Plaintiffs and Intervening Defendant the following

information at least once a quarter:

A. Logs or other documentation showing the number, date, purpose, number of participants, and user days of administrative launches (including science and research launches) by the Service;

B. Documentation of “minimum requirement” analyses for those launches described in subparagraph A above for the year 2000 and for subsequent years through 2004.

3. Backcountry Management Plan. The Service agrees that it will publish a notice of intent to review and revise the Park’s Backcountry Management Plan, which provides guidance for management of the Park’s backcountry, including areas that have been proposed as wilderness. The process of reviewing and revising the Backcountry Management Plan need not be linked to the CRMP planning process, and may take place after completion of the CRMP planning process. The Service shall prepare appropriate environmental documentation related to revisions of the Backcountry Management Plan.

4. Attorneys Fees and Costs. Without in any way admitting that its position in the above-referenced action was not substantially justified, the Federal Defendants will pay to the Plaintiffs the sum of \$3,063 in costs and \$30,000 in attorneys fees in full satisfaction of any claim for attorneys’ fees, costs, and other expenses related to the above-referenced action. The Plaintiffs will have no further recourse against the Federal Defendants for any additional payment of attorneys’ fees, costs, or other expenses related to the above-referenced action.

5. Nothing in this Agreement shall be construed or offered in evidence in any proceeding as an admission or concession of wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement. Federal Defendants do not hereby waive any defenses they may have concerning the claims settled under this Agreement. This Agreement is executed solely for the purpose of compromising and settling this litigation and nothing herein shall be construed as precedent in any other context. Nothing in this Agreement shall be construed to deprive a federal official of authority to revise, amend or promulgate regulations. Nothing in this

agreement shall be construed to commit a federal official to obligate or expend funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law. Nothing in this Agreement is intended to affect the Parties' obligations to comply with the applicable laws of the Hualapai Indian Tribe. Furthermore, nothing in this Agreement is intended to affect the rights of the Hualapai Indian Tribe or the Parties' obligations with respect to any permits that may be required on the Hualapai Indian Reservation. The Federal Defendants will respect the intergovernmental agreements between the National Park Service and the Hualapai Indian Tribe concerning the Area of Cooperation as defined in those agreements. In the sound exercise of their discretion, the Federal Defendants will exercise their best efforts to incorporate into the CRMP planning process the ongoing negotiations and consultations between the National Park Service and the Tribe concerning the Area of Cooperation and to incorporate into the CRMP itself the results of those negotiations and consultations. This Agreement settles all claims brought by the Plaintiff against the Federal Defendants in this case and represents the entirety of the parties' commitments with regard to settlement.

6. Plaintiffs agree to dismiss their claims pursuant to a joint stipulation of dismissal under Federal Rule of Civil Procedure 41. This Agreement shall be attached to the joint stipulation of dismissal filed with the Court. This Agreement shall not take effect until Plaintiffs' claims against the Federal Defendants have been dismissed by the Court. Plaintiffs' dismissal shall be without prejudice, except that: 1) until December 31, 2004 Plaintiffs may refile their claims related to the Park's management of the River corridor only if the Federal Defendants breach this Agreement; and 2) until December 31, 2005, Plaintiffs may refile their claims related to the Park's management of the backcountry outside of the River corridor only if the Federal Defendants do not publish the notice of intent referred to in paragraph 3 of this Agreement. The filing of this Agreement shall not be construed to constitute consent by the parties to the entry of the Agreement as an order of the Court, or to constitute consent by the parties to an action for specific performance of the terms of this Agreement.

Dated: _____, 2002.

LORI POTTER, ESQ.
Kelly, Haglund, Garnsey & Kahn, LLC
1441 Eighteenth Street, Suite 300
Denver, Colorado 80202-1255
(303) 296-9412 (telephone)
(303) 293-8705 (fax)

Attorneys for the Plaintiffs.

Dated: _____, 2002.

THOMAS L. SANSONETTI
Assistant Attorney General
Environment & Natural Resources Division

T. NEAL McALILEY, ESQ.
Trial Attorney
General Litigation Section
Environment & Natural Resources Division
U.S. Department of Justice
99 N.E. Fourth St., Room 415
Miami, Florida 33132-2111
(305) 961-9415 (telephone)
(305) 536-4651 (fax)

Of Counsel: ROBERT EATON, ESQ.
Office of the Field Solicitor
U.S. Department of the Interior
2968 Rodeo Park Dr. West
Paisano Bldg. Rm. 2070
Santa Fe, New Mexico 87505
(505) 988-6200 (telephone)
(505) 988-6217 (fax)

Attorneys for the Federal Defendants.

Dated: _____, 2002.

SAM KALEN, ESQ.
JONATHAN SIMON, ESQ.
Van Ness Feldman, PC
1050 Thomas Jefferson, NW
Seventh Floor
Washington, DC 20007
(202) 298-1800 (telephone)
(202) 338-2416 (fax)

Attorneys for the Intervening Defendant.

(This document was filed on February 5, 2002.)

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)	

**JOINT STIPULATION OF DISMISSAL
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(ii)**

Having reached a settlement of the Plaintiffs' claims in this case pursuant to the attached Settlement Agreement, the parties hereby jointly stipulate to dismissal of Plaintiffs' claims in this action pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii). The parties stipulate that this

dismissal shall be without prejudice; except that, 1) until December 31, 2004 Plaintiffs may refile their claims related to Grand Canyon National Park's management of the Colorado River corridor only if the Federal Defendants breach this Agreement; and 2) until December 31, 2005, Plaintiffs may refile their claims related to Grand Canyon National Park's management of the backcountry outside of the Colorado River corridor only if the Federal Defendants do not publish the notice of intent referred to in paragraph 3 of this Agreement.

Dated: _____, 2002.

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Kelly, Haglund, Garnsey & Kahn, LLC
1441 Eighteenth Street, Suite 300
Denver, Colorado 80202-1255
(303) 296-9412 (telephone)
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Of Counsel: ROBERT EATON, ESQ.
Office of the Field Solicitor
U.S. Department of the Interior
2968 Rodeo Park Dr. West
Paisano Bldg. Rm. 2070
Santa Fe, New Mexico 87505

(505) 988-6200 (telephone)
(505) 988-6217 (fax)

Attorneys for the Federal Defendants.

Dated: _____, 2002.

SAM KALEN, ESQ.
JONATHAN SIMON, ESQ.
Van Ness Feldman, PC
1050 Thomas Jefferson, NW
Seventh Floor
Washington, DC 20007
(202) 298-1800 (telephone)
(202) 338-2416 (fax)

Attorneys for the Intervening Defendant.

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Defendants,)

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Intervening Defendant.)

CV-00-1277-PCT-PGR-TSZ

[PROPOSED] ORDER OF DISMISSAL

Having considered the parties' Joint Stipulation of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), and having considered the Settlement Agreement filed by the parties

in this case, and good cause appearing therefor, the Court hereby DISMISSES this action. This dismissal shall be without prejudice, except that: 1) until December 31, 2004 Plaintiffs may refile their claims related to Grand Canyon National Park's management of the Colorado River corridor only if the Federal Defendants breach this Agreement; and 2) until December 31, 2005, Plaintiffs may refile their claims related to Grand Canyon National Park's management of the backcountry outside of the Colorado River corridor only if the Federal Defendants do not publish the notice of intent referred to in paragraph 3 of the Settlement Agreement filed in this case.

IT IS SO ORDERED.

Dated: January 30, 2002.

PAUL ROSENBLATT
United States District Judge